

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-215

DELOIS SMITH

APPELLANT

V.

JEFFERSON COMPREHENSIVE CARE
APPELLEE

Opinion Delivered September 24, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F312995]

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Delois Smith appeals the December 20, 2007 decision of the Arkansas Workers' Compensation Commission, which found she did not prove she sustained a compensable cervical or neck injury and that she was not entitled to additional benefits for her compensable low-back injury. Smith appeals, alleging that the Commission erred in finding she failed to establish a compensable injury, in failing to award temporary-total disability, and in finding she failed to prove additional medical treatment was reasonable and necessary. We affirm the Commission's decision.

Facts

Smith was working as a nurse for appellee Jefferson Comprehensive Care (Jefferson) on October 13, 2003, when she sat in a chair that collapsed causing her to fall to the floor and strike her neck/head on a nearby table. Smith has a history of back problems dating back to

1988 and was treated for back injuries from 1989 to December 2002. Smith's first medical treatment after her October 13, 2003 fall was on November 11, 2003. The treatment record from that day states: "back pain-hurting about 1 week Pt states back went out when she got out of tub this a.m." On November 14, 2003, Smith was diagnosed with cervical and lumbar strain. She was later diagnosed with "straightening of the cervical lordosis, probably due to muscle spasm" and disc bulges at C4-5, C5-6 and C6-7.

Smith filed a claim for benefits alleging that she suffered compensable injuries to her neck and lower back. Although Jefferson immediately disputed Smith's claim for benefits relating to her neck injury, Jefferson initially did not controvert Smith's claim for benefits relating to her back injury. It was not until July 28, 2005, that Jefferson controverted Smith's back-injury claim.

In an opinion dated June 1, 2006, the administrative law judge (ALJ) found that Smith proved a compensable neck injury, that she was entitled to temporary-total-disability benefits from October 13, 2003, through May 24, 2004, for her neck injury, and that she was entitled to all medical treatment reasonably necessary to treat her neck injury and her lower-back injury. On December 6, 2006, the ALJ's decision was reversed by the Commission, which found that Smith failed to prove a compensable neck injury and that she failed to prove entitlement to additional medical benefits for her lower-back injury. The Commission held that Jefferson was not obligated to pay any benefits for Smith's back after July 28, 2005, the date of controversion.

On appeal, this court, in an unpublished opinion¹ delivered September 12, 2007, reversed and remanded to the Commission for further findings because it was unclear whether the Commission denied Smith's claim for her failure to prove her injury by medical evidence supported by objective findings, or whether the claim was denied because Smith failed to prove the causal relationship between her neck injury and her employment. On December 20, 2007, the Commission again reversed the ALJ, finding that Smith did not prove she sustained a compensable cervical or neck injury, that she was not entitled to additional medical treatment for her lower-back injury after she reached maximum-medical improvement on January 27, 2005, and that she was not entitled to temporary-total disability beyond that awarded by the ALJ from October 13, 2003, to May 24, 2004.

The Commission's opinion states as follows:

[T]he Full Commission finds that the claimant did not prove she sustained an accidental injury causing internal or external physical harm to the claimant's neck or cervical spine on October 13, 2003. The claimant did not prove that she sustained an injury to her neck or cervical spine arising out of and in the course of her employment with the respondents on October 13, 2003. Nor was there a specific incident identifiable by time and place of occurrence on October 13, 2003, which caused an injury to the claimant's neck or cervical spine.

The instant claimant also did not establish a compensable injury to her neck or cervical spine by medical evidence supported by objective findings, as required by Ark. Code Ann. § 11-9-102(4)(D).

This appeal timely followed.

¹*Smith v. Jefferson Comprehensive Care System, Inc.*, CA 07-92, (Ark. App. September 12, 2007).

Standard of Review

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *See Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, 235 S.W.3d 499 (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* The substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the grant of relief. *See id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Doris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005).

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Patterson v. Ark. Dep't of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* The Commission has the authority to accept

or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d 519 (2005).

I. Appellant's Compensability Argument

A. Additional medical treatment for lower-back injury

Smith first argues the Commission erred in finding that she failed to establish a compensable injury. Included in her argument related to "compensable injury," Smith contends the Commission erred in failing to find a compensable lower-back injury. However, the Commission's decision on appeal does not dispute the compensability of Smith's lower-back injury. The Commission denied Smith's request for additional medical treatment for her lower-back injury after Dr. Sprinkle pronounced maximum-medical improvement on January 27, 2005.

Smith points to the parties' pre-hearing conference stipulation that she sustained a compensable low-back injury on October 13, 2003, for which some benefits were paid. Smith argues that Jefferson is attempting to withdraw its stipulation on appeal and that the Commission ignored the stipulation in order to deny her benefits for her compensable-back injury. Smith claims that she proved she sustained an aggravation of a preexisting back injury. *See Hubley v. Best Western-Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996) (where this court held that the aggravation of a preexisting, non-compensable condition by a compensable injury is itself compensable).

She notes Dr. Saer's opinion in a letter dated April 27, 2004, that "she has some preexisting degenerative changes as well, but I think the October 2003 injury just aggravated her preexisting condition." Smith also points out that Saer noted her complaints of neck and lower-back pain in March 2004. She argues that even though Saer noted that the mild-disc bulging in her cervical spine was normal for her age, the lumbar MRI did show a central-disc bulge/annular tear with mild stenosis. She emphasizes that Dr. Betton's report of May 7, 2004, states the ALJ was correct in finding that, "even if the bulges were degenerative in nature, the October 13th fall wherein the claimant struck her head aggravated her condition and caused spasm." She argues that a muscle spasm is involuntary and can be detected by direct palpation of the individual muscle, apparently contending that this constitutes an objective medical finding. Smith's arguments, while hard to follow, seem to indicate that, based upon the medical records and doctors' opinions as recited above, she is entitled to benefits for her alleged neck injury and further benefits for her lower-back injury.

Appellees maintain that due to appellant's significant and serious preexisting problems, the medical benefits paid by appellees were sufficient and any further treatment appellant needs for her compensable lower-back injury is caused by her significant preexisting problems. The Commission found that the appellees' obligation to provide medical treatment was terminated by the treating physicians' determination that appellant had reached maximum-medical improvement on January 27, 2005, which means appellant had recovered fully from the October 13, 2003 incident. Appellees agree, therefore, that an aggravation of a prior condition is compensable. However, appellees contend that the issue is whether all the

treatment appellant may need for her back problem naturally flows from the injury she sustained to her lower back on October 13, 2003. *See Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 664 S.W.2d 321 (1983).

Appellant has a history of back problems dating back to an injury in 1988. When appellant sought treatment for the October 13, 2003 injury on November 11, 2003, her chief complaint was back pain. She reported on that date that she had hurt her back getting out of the bathtub that morning. The report further states that she had a history of back and leg pain for twelve years. Appellant claimed she received treatment for her 1988 back injury for three years. However, her medical records indicate that she continued to receive medical attention for her back injury until April 2003. Appellant also stated that her back injury had not improved since 1988. Therefore, the Commission had a substantial basis for its decision to deny Smith's claim for further medical treatment.

B. Cervical or neck injury

Also, the Commission did not err in finding that appellant fell short in providing proof that she sustained a compensable injury to her neck. The accident occurred on October 13, 2003. On November 11, 2003, she sought treatment for the first time. Her complaint was back pain, which resulted from hurting her back that morning getting out of the bathtub. She did not mention her neck on her December 16, 2003 visit to Dr. Saer. This evidence is contrary to appellant's claim that her neck began hurting immediately following the accident and continued through December 2003. Dr. Betton reported on the December 10, 2003 visit with appellant that he was perplexed as to why it would take her so long to experience

symptoms from the October 13, 2003 accident. Therefore, substantial evidence supports the Commission's decision.

II. Temporary total disability

To be entitled to temporary-total-disability benefits, a worker must prove by a preponderance of the evidence that he remained in a period of healing from a compensable injury, during which time he suffered a total incapacity to earn wages. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period has not ended so long as treatment is administered for healing and alleviation of the condition and continues until the employee is as far restored as the permanent character of the injury will permit. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993).

Appellant contends that the Commission erred in failing to award her temporary-total-disability benefits. However, appellant misinterprets the Commission's decision of December 20, 2007, which states:

In the present matter, the parties stipulated that the claimant sustained a compensable low back injury on October 13, 2003. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits from October 13, 2003 through May 29, 2004. The claimant did not contend that she was entitled to additional temporary total disability and in fact contends that the ALJ's award was correct. Dr. Sprinkle returned the claimant to work with restrictions on May 24, 2004. Although Dr. Sprinkle did not find maximum medical improvement until January 27, 2005, the evidence shows that the claimant was not incapacitated from earning wages after May 24, 2004. The record thus does not show that the claimant was entitled to temporary total disability beyond that period awarded by the administrative law judge.

To the extent appellant argues she is entitled to temporary-total-disability benefits beyond those awarded by the ALJ, we disagree. If her contention is that a lifting restriction

of fifty pounds, which was given to her by Dr. Sprinkle on May 24, 2004, entitles her to temporary-total disability, her argument is without merit, as a restriction does not necessarily keep one from being able to earn wages.

Affirmed.

ROBBINS and BIRD, JJ., agree.